

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

REF:OCCL:DH

ENF HA-05-25

March 23, 2007

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Enforcement File No. HA-05-25
Regarding the Alleged, Unauthorized Grading of 13,500 Square Feet
and 2,000 Cubic Yards of Geological Features from the 1960 Kapoho
Lava Flow

BY: Douglas V. Shaver, P.O. Box 2072, Pahoa, Hawaii, Owner Subject
Parcel TMK: (3) 1-4-026:002 (11,995 Square Feet) C/O Steven S.C.
Lim, Carlsmith Ball LLP, 121 Waianuenue Avenue, P.O. Box 686,
Hilo, Hawaii 96721

LAND OWNERSHIP: State of Hawaii Department of Land and Natural Resources (DLNR)

TMK: (3) 1-4-002:047

AREA OF PARCEL: 116 Acres

AREA OF USE: Approximately 13,500 Square Feet

LOCATION: Kapoho Beach Lots Subdivision, Puna District, Island of Hawaii

SUBZONE: General Subzone

DEFERRED ITEM:

The Board of Land and Natural Resources (BLNR) at its October 22, 2004 meeting deferred this item at the request of the alleged, Mr. Shaver's attorney, Steve Lim.

DESCRIPTION OF AREA:

The State-owned 116 acre subject parcel TMK: (3) 1-4-002:047, is located adjacent to the Kapoho

Subdivision¹, in the District of Kapoho, Island of Hawaii. The subject parcel abuts the Kapoho Land & Development Company's subject parcel TMK: (3) 1-4-011:014; it is a .69-acre vertical strip of land and was once the location of the old shoreline prior to the Kapoho eruption²

The State-owned subject parcel was formerly submerged land, however through the occurrence of the 1960 Kapoho eruption, the lands became accreted unencumbered state-owned lands; it is located in the State Land Use (SLU) Conservation District, General subzone. The State-owned subject parcel is bounded by the ocean to the south and east, TMK Plats (3) 1-4-0010, and 011 to the west, and by Kumukahi Lighthouse to the north (on land owned by the Federal Government). Access to the State-owned subject parcel can be obtained through the Kapoho subdivision (**Exhibits 1, 2 & 3**).

ALLEGED UNAUTHORIZED LAND USES:

On October 1, 2003, the DLNR, Division of Conservation and Resources Enforcement (DOCARE) officer conducted a site inspection due to a land use complaint. During the site inspection it was alleged that two landowners had removed 1960 lava flow material from the State-owned subject parcel to improve their subject lots.

On October 16, 2003, DOCARE contacted Kapoho Beach Lots Community Association (KBLCA) member Pat Kelley, who noted he gave permission to bulldozer operator Alfred Lee to use his property, (subject parcel TMK: (3) 1-4-026:008) to drop off and access the 1960's lava flow accretion to bulldoze...Doug Shaver's subject parcel TMK: (3) 1-4-026:002.

On October 17, 2003, DOCARE interviewed Mr. Shaver as his subject parcel and the State-owned subject parcel had been grubbed and graded. Mr. Shaver noted the subject parcel was bulldozed approximately a year earlier (October 2002). DOCARE asked Mr. Shaver if he had given any special instructions to the bulldozer operator, Mr. Alfred Ching Lee, Jr. (Lee's General Services). Mr. Shaver told Mr. Lee to follow the existing lots. The bulldozer operator accessed Mr. Shaver's subject parcel by transversing through the accreted State-owned parcel from Pat Kelly's subject parcel TMK: (3) 1-4-026:008 (which was also used as the staging area). Mr. Shaver noted he had drawn no permits for the grubbing and didn't think he had to. The DOCARE Officer asked if he could access the State Land ...through his yard and he stated 'that's no problem at all.'

On October 23, 2003, DOCARE interviewed Mr. Alfred Lee who said he did the job for Mr. Shaver at the end of 2002. Mr. Lee accessed Mr. Shaver's parcel through Pat Kelley's lot...he felt he did nothing wrong because he stayed on the existing bulldozer roads.

On December 2003, the DLNR, Office of Conservation and Coastal Lands (OCCL) received the DOCARE report regarding the alleged, unauthorized disturbance of geological features on the State-owned subject parcel **Exhibit 4**. The DOCARE report concluded through the Engineering Division, Hilo Branch staff that the disturbed area located in the Conservation District was approximately

¹ The Kapoho Beach lots are located in the State Land Use (SLU), Urban District.

² The Kapoho Land and Development Company, P.O. Box 374, Hilo, Hawaii, 96720 owns subject parcel.

18,500 square feet, and an estimate of 1,240.7 cubic yards of filled was removed and placed on Mr. Shaver's subject parcel (**Exhibit 5**).

On November 3, 2003, a Cease and Desist was served on the Mr. Shaver (**Exhibit 6**).

On February 5, 2004, the OCCL sent a letter to Mr. Shaver noting the matter would be brought before the BLNR meeting at a time, date, and location to be announced (**Exhibit 7**).

On August 28, 2004, Mr. Shaver sent a letter to the OCCL to explain his actions. He noted work was being conducted on his subject parcel and that he felt that grading beyond his property pins was not problematic; it would be a beneficial long term to the overall environment. He noted that the adjacent lots, which abut the State-owned subject parcel, have encroached upon the land; either by landscaping or by beautifying it. He consulted various members of the community, and "the consensus was that there was no problem doing some grading in order to plant some coco's, and other native vegetation to reclaim a little or the new aina so generously provided by Pele, as long as one did not build anything permanent on said property or tried to claim it in any way...everyone that I spoke with said there had never been any complaints from DLNR, or anyone else in that matter regarding encroachments." Mr. Shaver notes that he had no intention of "taking" anything (**Exhibit 8**).

On September 20, 2004, the OCCL, HLDO, and DOCARE staff conducted a site inspection of the State-owned subject parcel. The land fronting Mr. Shaver's subject parcel was graded smooth, and there were no geological features left (**Exhibit 9**).

On November 24, 2004, Mr. Shaver's attorney, Mr. Lim, requested that the matter be deferred until February 2005 to allow Mr. Shaver to respond to the issues raised in Enforcement Case HA-05-25 (**Exhibit 10**).

On January 6, 2005, Mr. Lim again asked for more time to allow Mr. Shaver's engineer time to perform studies; staff notified him that the matter would be scheduled before the Board on March 24, 2006 (**Exhibit 11**).

On June 15, 2005, Mr. Lim notes he was unable to verify the amounts reported by DOCARE and the state engineer; and he could not proceed in the matter (**Exhibit 12**).

On May 25, 2006, the OCCL, ODLO, and the State Land Surveyor from the Department of Accounting and General Services (DAGS), Survey Division conducted a site inspection on the State-owned subject parcel; it was determined that 13,500 square feet of area, and 2,000 cubic yards of volume of the State-owned property was affected ³(**Exhibit 13**).

³ The graded area of 13,500 square feet was computed by taking an average length $(144+124)/2=134$ feet) multiplied by the average width $(102+116)/2=109$ feet) and subtracting the area of the Kapoho Beach Lots subject parcel (1,100 square feet) Area (hatched) = 134 feet x 109 feet - 1,100 square feet = 13,500 square feet. The volume was computed by multiplying the hatched area (13,500 square feet) by the average depth (4 feet) to come up with a total area of 54,000

On February 6, 2007, Mr. Lim notes Mr. Shaver is suffering from a life threatening illness and offered to pay the \$2,000 fine plus \$2,224.07 administrative costs; total costs \$4,224.07 (**Exhibit 14**).

On February 14, 2007, the OCCL wrote to Mr. Lim and gave an alternative solution; Mr. Shaver would hire someone to re-scarify the area disturbed, under the direction of the Hawaii District Land Office, and would pay the \$2,224.07 administrative fine (**Exhibit 15**).

The alleged, unauthorized grading of 13,500 square feet, and 2,000 cubic yards of volume of the State-owned subject parcel is the subject of the staff report.

REFERRAL OF ALLEGED VIOLATIONS TO THE LAND BOARD RATHER THAN THE HEARING OFFICER/ADMINISTRATIVE PENALTY SYSTEM (HOAPS):

The alleged violations have been referred to the Board of Land and Natural Resources (BLNR) rather than HOAPS because of the seriousness of the violations⁴.

CONSERVATION DISTRICT LAW AND RULES:

Chapter 13-5, Hawaii Administrative Rules (HAR) and Chapter 183C, Hawaii Revised Statutes (HRS), regulate land uses in the Conservation District by identifying a list of uses that may be allowed by Conservation District Use Permit. The chapters also provide for penalties, collection of administrative costs, costs associated with land and/or habitat restoration, and damages to state land for uses that are not allowed or for which no permit has been obtained. HAR, Chapter 13-5 defines "land use" in part as: the placement or erection of any solid material on land or the grading, removing or dredging of any material or natural resource on land.

The alleged, unauthorized grading of 13,500 square feet, and 2,000 cubic yards of volume of the State-owned subject parcel is the subject of the staff report. This report and staff recommend conditions to resolve the one (1) subject Conservation District violation. Pursuant to HRS, Chapter 183C, the maximum fine for a conservation district violation is \$2,000 per violation in addition to administrative costs, costs associated with the land and/or habitat restoration, if required, and damages to state land. After written or verbal notification from the Department, willful violation of this section may incur an additional fine of up to \$2,000 per day per violation for each day the violation persists.

cubic feet or 2,000 cubic yards. Volume (hatched) x depth = 13,500 square feet x 4 feet = 54,000 cubic feet or 2,000 cubic yards.

⁴ HOAPS distinguishes between Level I and Level II violations, the former being the more serious category which is referred to the Board, and the latter, minor violations, referred to HOAPS.

DISCUSSION:

Staff notes the stated purpose of the Conservation District law is to protect and conserve natural resources. The section of the law, HRS, Section 183C-7, that refers to enforcement of our conservation laws should have a deterrent effect on the landowner to prevent them from doing or allowing malfeasance within the Conservation District.

On December 21, 1959, the Kilauea Iki eruption ended but the shallow reservoir beneath the summit of Kilauea volcano was still filled with magma. On January 13, 1960, magma exited through several vents in Kapoho. By January 30, 1962, Kapoho town had been overwhelmed with lava⁵. The 1960 lava flow covered more than 10 km², including 2 km² of new land beyond the original shoreline (**Exhibit 16**). The volume of new lava was conservatively estimated as 122 million cubic meters with an additional 7.5 million cubic meters of pyroclastic material.

Staff notes the accreted land from the 1960 lava flow is considered a "scenic area" as it provides open space values and possesses natural, scenic, and wildland qualities. It can also be considered a "wilderness area" in which the area has an abundance of geological formations that has been largely undisturbed by human influences.

Staff notes Mr. Shaver was aware the subject parcel fronting TMK: 014 was State-owned land, as noted in the letter to the OCCL. Staff notes Mr. Shaver's excuse that everyone is and/or has done the same action is not a valid excuse. Mr. Shaver should have checked with the appropriate authorities about the state zoning prior to excavating and disturbing the area. Staff notes this does not excuse Mr. Shaver from being culpable.

Mr. Shaver states he did not remove anything from the State-owned property; he only graded beyond his pins...there was no intentional taking of anything. Mr. Lim also noted through discussions with the OCCL that Mr. Shaver bought and added cinder onto his parcel after the October 17, 2003 DOCARE inspection, and prior to the May 25, 2006 OCCL, DAGS, and HDLO site inspection. Staff notes it is possible Mr. Shaver added cinder in June 2004; but he merely added cinder after the fact between the two site inspections.

Proposed Negotiations Due to Unusual Circumstances

Staff notes Enforcement Case HA-05-25 has taken a long time to resolve and bring back to the BLNR. Time was allowed to for Mr. Shaver's engineer to conduct further studies. However, Mr. Lim notes he was unable to verify the amounts and therefore could not proceed in the matter. Staff conducted a survey and found the amount of area square affected (13,500 square feet versus) was less but the amount of volume affected (2,000 cubic yards) was larger. Staff does not condone Mr. Shaver's actions however it would be better to resolve Enforcement Case HA-05-25 due to Mr. Shaver's illness.

⁵ The 1960 eruption was the third largest in the 20th century at Kilauea, dwarfed by the Mauna Ulu and Puu Oo-Kupaianaha eruptions.

Therefore staff recommends to the Board of Land and Natural Resources that Mr. Shaver hire someone to re-scarify the land fronting his parcel, under the direction of Hawaii District Land Office staff, to deter Mr. Shaver and/or future landowners from using the land, within sixty (60) days from the date of the BLNR's action.

Staff notes Mr. Shaver should pay for the following divisional resources used: 1) Office of Conservation and Coastal Lands (OCCL); 2) HDLO; and 3) DOCARE Hawaii Branch. DOCARE's staff calculated administrative costs total \$1,524.07; HDLO's staff calculated administrative costs total \$200.00; and OCCL's staff calculated administrative costs total \$500.00. Staff has calculated the total amount to be \$2,224.07.

This submittal and notice of the Board's meeting will be sent to Mr. Shaver attorney by certified mail to the address of record in Hawaii.

STAFF RECOMMENDATION:

1. That Mr. Shaver did in fact, authorize, cause or allow one (1) unauthorized violation to occur (grading of 13,500 square feet, and 2,000 cubic yards of material from the State-owned subject parcel);
2. That the one (1) unauthorized land use is of a serious and willful nature;
3. That the one (1) unauthorized land uses occurred within the State Land Use Conservation District, General subzone; and

AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to Chapter 183C, Hawaii Revised Statutes (HRS), the Board find Mr. Shaver in violation of HRS, Chapter 183C and HAR, Chapter 13-5, and is subject to the following:

1. That Mr. Shaver violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR) in one (1) instances by failing to obtain the appropriate approval for the alleged, unauthorized grading of 13,500 square feet and 2,000 cubic yards of the State-owned subject parcel to occur, Mr. Shaver is fined \$2,000.00;
2. That Mr. Shaver is fined an additional \$2,224.07 for administrative costs associated with the subject violations;
3. That Mr. Shaver shall pay all fines (total **\$2,224.07**) within thirty (30) days of the date of the Board's action;

4. That Mr. Shaver will hire someone to re-scarify the land fronting his parcel, under the direction of Hawaii District Land Office staff, within sixty (60) days from the date of the BLNR's action;
5. That in the event of failure of the alleged to comply with any order herein, Mr. Shaver shall be fined an additional \$2,000 per day until the order is complied with;
6. That no further work shall occur on the subject parcels within the Conservation District, without the Board of Land and Natural Resources approval; Chairman's approval and/or OCCL approval. If further work occurs in the Conservation District portions of both subject parcels without approval; Mr. Shaver will be fined an additional \$2,000 a day; and
7. That in the event of failure of Mr. Shaver to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

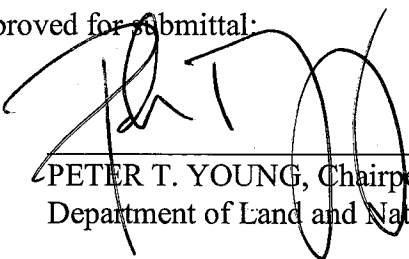
Respectfully submitted,



Dawn T. Hegger, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

By:



PETER T. YOUNG, Chairperson
Department of Land and Natural Resources

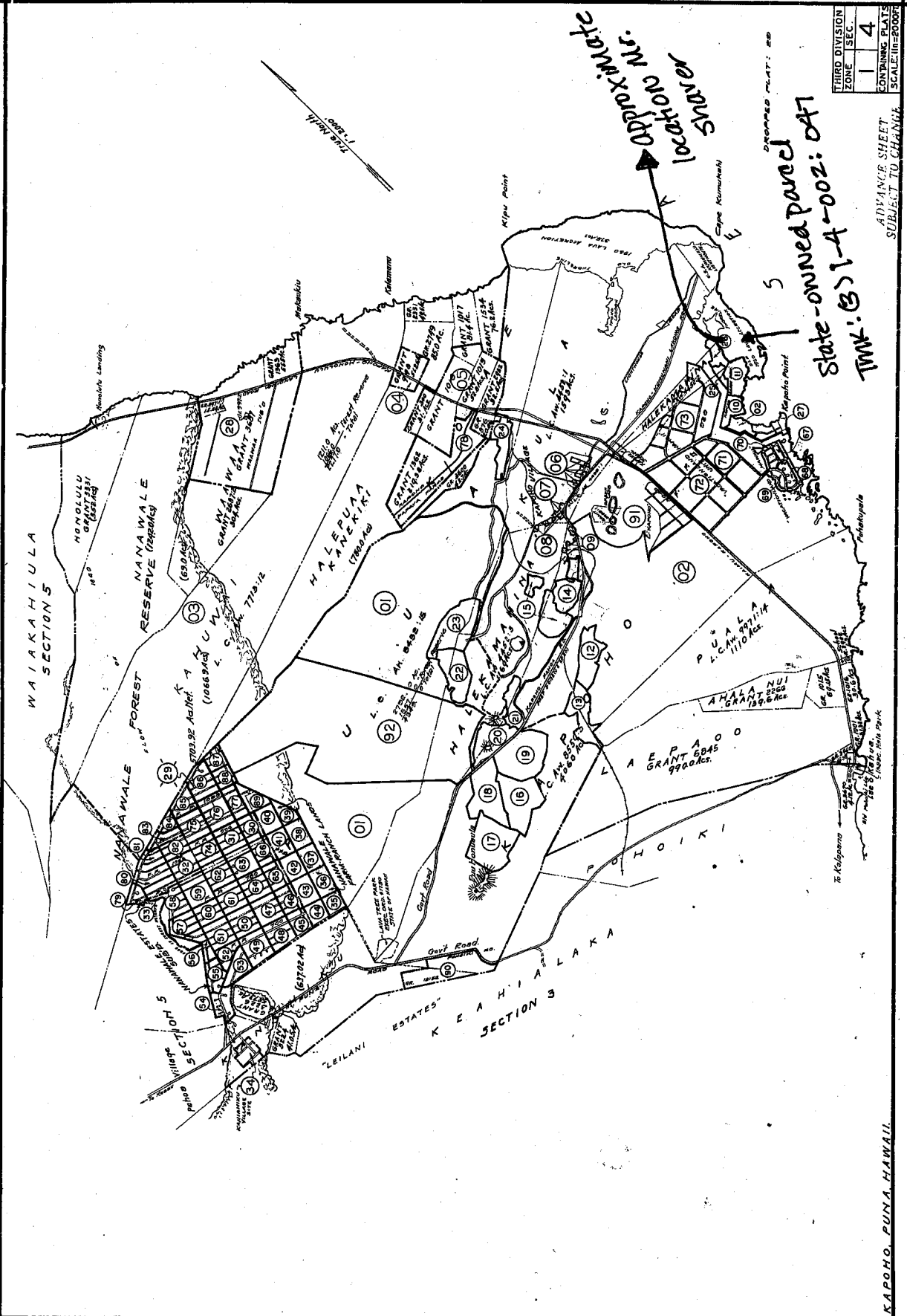
The map shows the Hawaiian Islands with the following labels:

- Upolu Pt
- MAUI
- MAHUKONA
- KAWAHAE
- PLAKO
- ANAEOHOMALLU
- KHOLE
- KAILUA
- KEALOHU
- KEALAKERUA
- MOONAUHAI
- HOOKENA
- Kaula Pt
- MILOI
- Kamal Pt
- Pohua Bay
- Ke Lee
- HAALEHU
- PAHALA
- Apua Pt
- Honolulu
- Hilo
- Volcano
- National Park
- Mouna Loa
- Hawaii Volcanoes National Park
- Mouna Koe
- POHAKULU
- WABEA
- KUKUNAELE
- MONOKAA
- PAALUO
- LAUPAHENOE
- MINOLE
- HAKALAU
- PEPEEKEO
- OHOMEA
- KEALAKANA
- KEAAU
- PAHOA
- HALAPANA

A compass rose is located in the bottom right corner, with 'N' for North, 'S' for South, 'E' for East, and 'W' for West. A large arrow points from the map towards the bottom right corner.

State-owned Subject Parcel
TMR: (3) 1-4-002:047

1



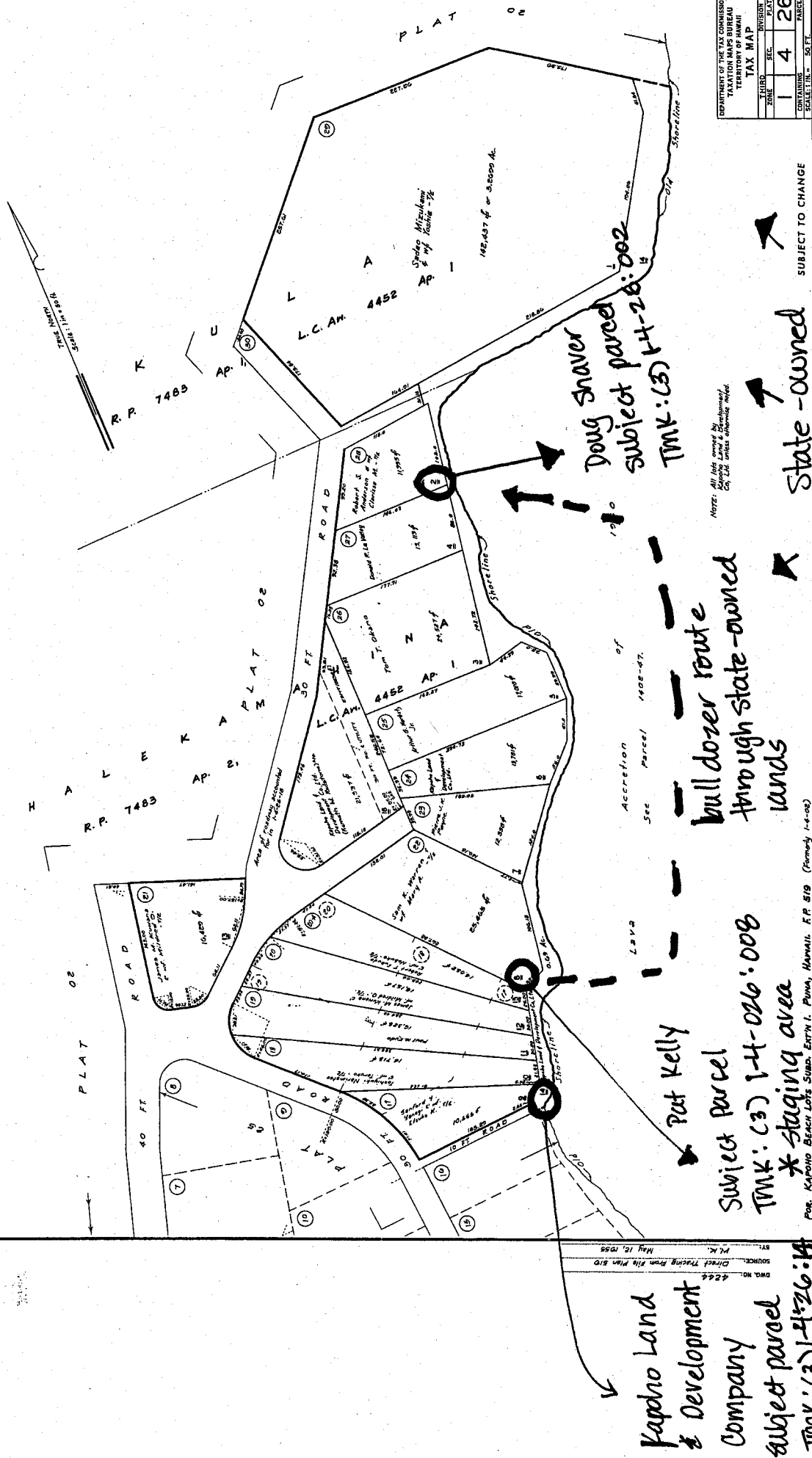


EXHIBIT 2

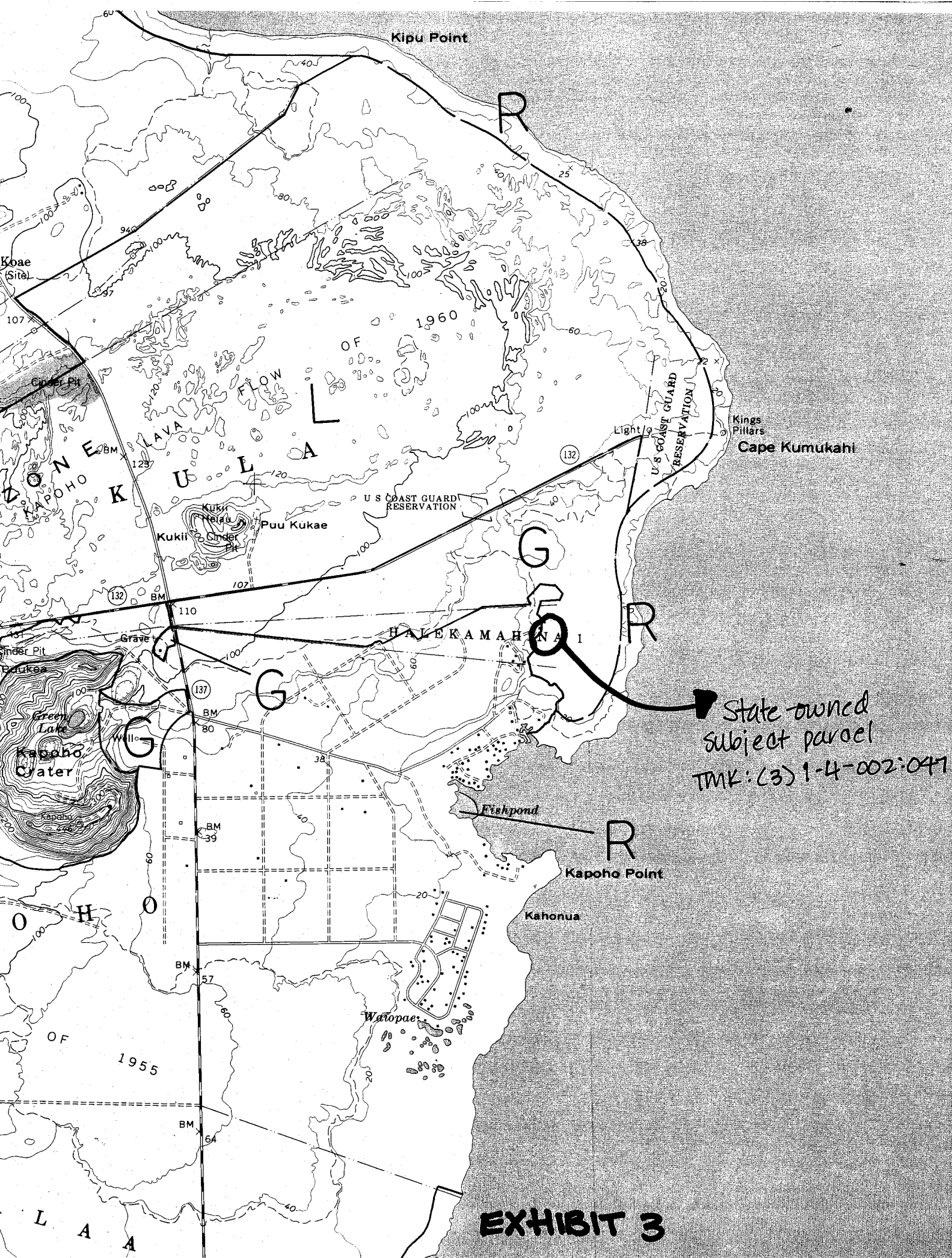


EXHIBIT 3

ADVANCE SHEET
SUBJECT TO CHANGE

UNITED

Cape Kumukahi

Drowned at: 20

State - owned

Subject Parcel 1-A-2:047

Subject Tmk 1-A-2:047

THIRD DIVISION	ZONE	SECTION	CONTAINING P
		1	4

ADVANCE SHEET

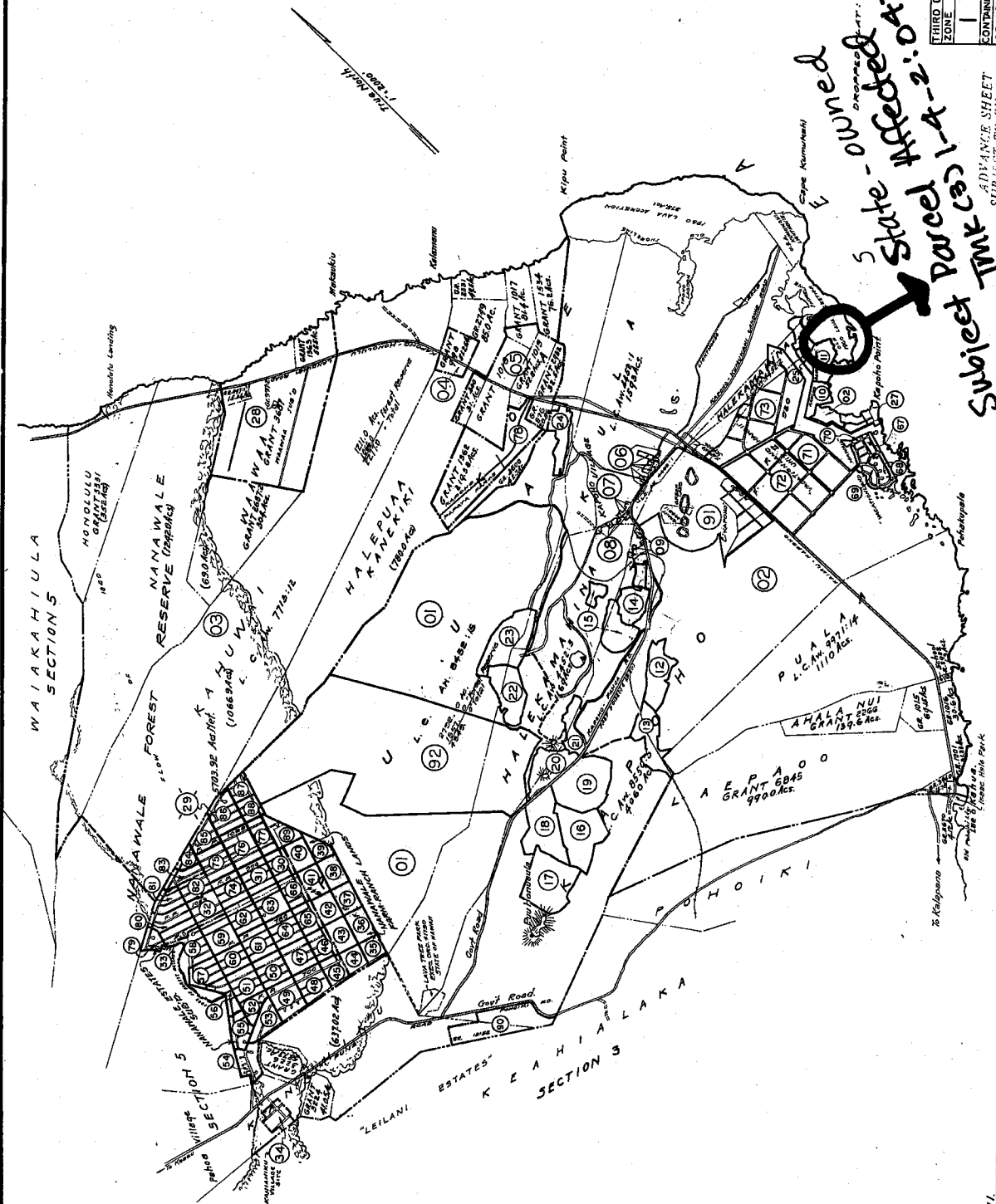


EXHIBIT 3

STATE OF HAWAII
DLNR/DOCARE

COPY

Exhibit # G

PHOTOGRAPHIC RECORD

Report # [REDACTED]

Classification LAND DIVISION:

Page 1 of 2 Pages

CDUA VIOLATION-ENCROACHMENT

DATE/TIME:

10-17-03/1300

PHOTOGRAPHER:

[REDACTED]

NUMBER OF PHOTOS TAKEN:

(23) Twenty three

CAMERA USED:

Kodak DC 4800

WEATHER:

Sunny

DAY XXX

NIGHT

[REDACTED] = on disc Exhibit "L"

PHOTO #	DESCRIPTION
DCP 157	Depicts close up view of parcel (TMK#: 1-4-26-02) SHAVERS driveway on N.W. corner looking East.
DCP 158	Depicts mid range view of parcel (TMK#: 1-4-26-02) SHAVERS, 2nd tier of fill, looking North.
DCP 159	Depicts long range view of parcel (TMK#: 1-4-26-02) SHAVERS from S.E boundary lookin East.
DCP 160	Depicts mid range view of parcel (TMK#: 1-4-26-04) SHAVERS neighbors encroachment.
DCP 161	Depicts close up view of parcel (TMK#: 1-4-26-02) SHAVERS, East boundary of encroachment looking North.
DCP 162	Depicts a mid range view of DCP 160 from East boundary of encroachment looking West.
DCP 163	Depicts mid range view of parcel (TMK#: 1-4-26-04) SHAVERS, from S.E. corner of encroachment, *Note lot elevations.
DCP 164	Depicts mid range view of parcel (TMK#: 1-4-26-04) SHAVERS, from N.E. corner of encroachment.
DCP 165	Depicts mid range view of parcel (TMK#: 1-4-26-04) SHAVERS, from N.E. corner of encroachment, looking to the S.E. corner.
DCP 166	Depicts mid range view of parcel (TMK#: 1-4-26-04) SHAVERS, eastern boundary.
DCP 167	Depicts mid range view of parcel (TMK#: 1-4-26-04) SHAVERS, N.E. boundary to S.E. boundary of encroachment.
DCP 168	Depicts old bull dozer road going East/Makai towards the ocean. *Note newer bull dozer road which crosses older road.
DCP 169	Depicts new bull dozer road headed towards the SHAVER parcel.

OFFICER: [REDACTED]

BADGE NO [REDACTED]

DATE/TIME 11-13-03/1209 Hrs.

SUPERVISOR APPROVAL [REDACTED] CREO IV

DATE/TIME

Form HB106

EXHIBIT 4

STATE OF HAWAII
DLNR/DOCARE

COPY

Exhibit # G

PHOTOGRAPHIC RECORD

Report # [REDACTED]

Classification LAND DIVISION:

Page 2 of 2 Pages

CDUA VIOLATION-ENCROACHMENT

DATE/TIME:

10-17-03/1300

PHOTOGRAPHER:

[REDACTED]

NUMBER OF PHOTOS TAKEN:

(23) Twenty three

CAMERA USED:

Kodak DC 4800

WEATHER:

Sunny

DAY XXX

NIGHT

PHOTO #	DESCRIPTION
DCP 170	Depicts close up view of parcel (TMK#: 1-4-26-02) SHAVERS S.E boundary pin.
DCP 171	Depicts close up view of parcel (TMK#: 1-4-26-02) SHAVERS S.E boundary pin, looking North.
DCP 172	Depicts close up view of parcel (TMK#: 1-4-26-02) SHAVERS, from road/West boundary looking North, *Note the 2 tier lot elevation.
DCP 173	Depicts a mid range view of <u>[REDACTED]</u> Note the track marks. This is where the bull dozer accessed the State Conservation district.
DCP 174	Depicts a mid range view of <u>[REDACTED]</u> Note the track marks. This is where the bull dozer went around the existing gate to access The Conservation district.
DCP 175	Depicts a mid range view of <u>[REDACTED]</u> Note the track marks. This is where the bull dozer went around the existing gate to access The Conservation district.
DCP 176	Depicts a mid range view of bull dozer tracks turning North which leads to the SHAVER parcel
DCP 177	Depicts a mid range view of bull dozer tracks turning North which leads to an adjacent lot near the SHAVER parcel
DCP 178	Depicts a mid range view of bull dozer tracks turning North which leads to a different adjacent lot near the SHAVER parcel
DCP 179	Depicts a mid range view of bull dozer tracks turning North which leads to the SHAVER parcel.

OFFICER: [REDACTED]

BADGE NO. [REDACTED]

DATE/TIME 11-13-03/1252 Hrs.

SUPERVISOR APPROVAL: [REDACTED]

CEO IV

DATE/TIME

State of Hawaii
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement

ADVICE OF RIGHTS

Report/Citation # 11A04-448

I am a Conservation Enforcement Officer. I want to inform you of your rights.

1. You have the right to remain silent. You do not have to answer any questions.
2. Anything you say may be used against you in a court of law.
3. You have the right to talk to a lawyer before we ask you any questions and to have him with you during questioning.
4. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
5. If you decide to answer the questions now without a lawyer present, you will still have the right to stop answering at any time and talk to a lawyer.

The Advice of Rights was administered to DOUGLAS SHAVER

By JOHN P. HOLLEY
Conservation Enforcement Officer

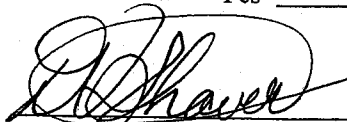
<u>14-4977 LAIMANA STREET</u>	<u>10-17-03</u>	<u>11:56</u>
Location	Date	Time

WAIVER OF RIGHTS

Initial

- | | | | |
|---|---------------|--------------|--|
| 1. Do you understand the rights that I have just read to you? | Yes <u>DS</u> | No | |
| 2. Do you want a lawyer now? | Yes | No <u>DS</u> | |
| 3. Are you willing to answer questions and make a statement? | Yes <u>DS</u> | No | |
| 4. Do you want a lawyer during this interview? | Yes | No <u>DS</u> | |

Witness


Subject's Signature

Date

Time

Date

Time

Refused to sign / /

All the foregoing was translated into

By

Remarks:

EXHIBIT 4

State of Hawaii
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement

ADVICE OF RIGHTS

Report/Citation # HA04-445

I am a Conservation Enforcement Officer. I want to inform you of your rights.

1. You have the right to remain silent. You do not have to answer any questions.
2. Anything you say may be used against you in a court of law.
3. You have the right to talk to a lawyer before we ask you any questions and to have him with you during questioning.
4. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
5. If you decide to answer the questions now without a lawyer present, you will still have the right to stop answering at any time and talk to a lawyer.

The Advice of Rights was administered to ALFRED CHONG LEE JR.

By John P. Holley
Conservation Enforcement Officer

LEE PROPERTY PAHOA, HI -
Location

10-23-03

Date

16:00 HST

Time

WAIVER OF RIGHTS

Initial

1. Do you understand the rights that I have just read to you? Yes AL No
2. Do you want a lawyer now? Yes No AL
3. Are you willing to answer questions and make a statement? Yes AL No
4. Do you want a lawyer during this interview? Yes No AL

Witness

Alfred Chong Lee Jr.
Subject's Signature

Date

Time

Date

Time

Refused to sign / /

All the foregoing was translated into

By

Remarks:

DOCARE REPORT SITE VISIT
10/17/2003
SHAVER TMK: (3) 1-4-026:002



PHOTO 157



PHOTO 158

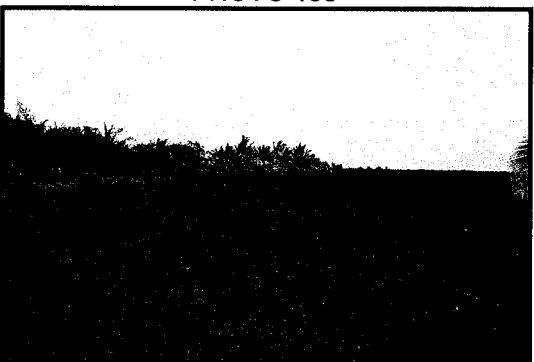


PHOTO 159



PHOTO 160



PHOTO 161



PHOTO 162



PHOTO 163

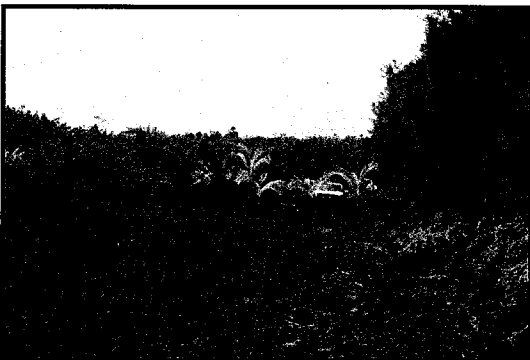


PHOTO 164



PHOTO 165

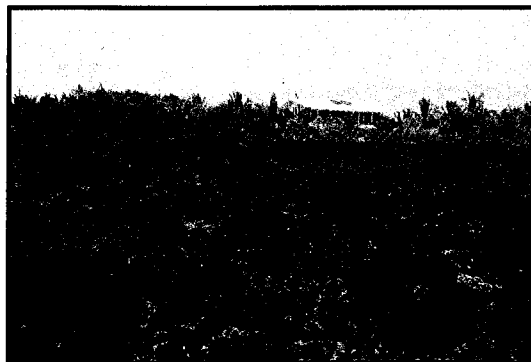


PHOTO 169



PHOTO 166



PHOTO 170

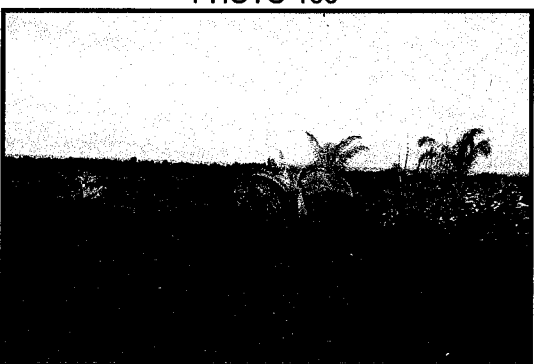


PHOTO 167

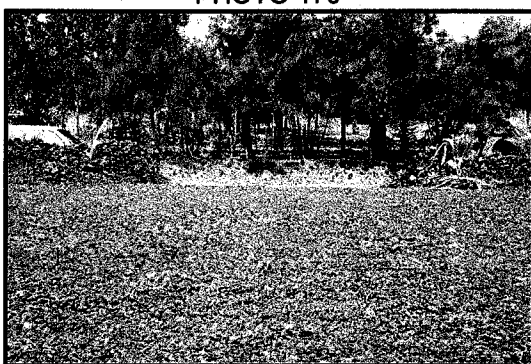


PHOTO 171

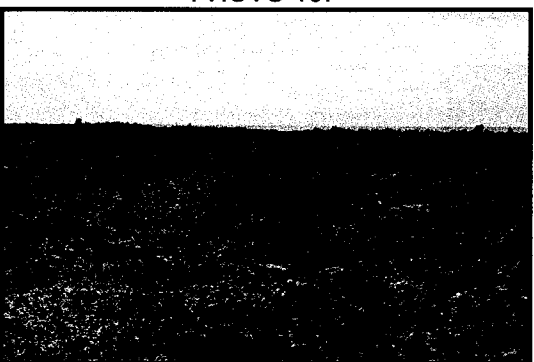


PHOTO 168

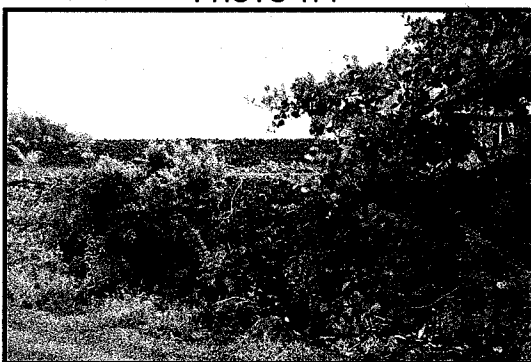


PHOTO 172

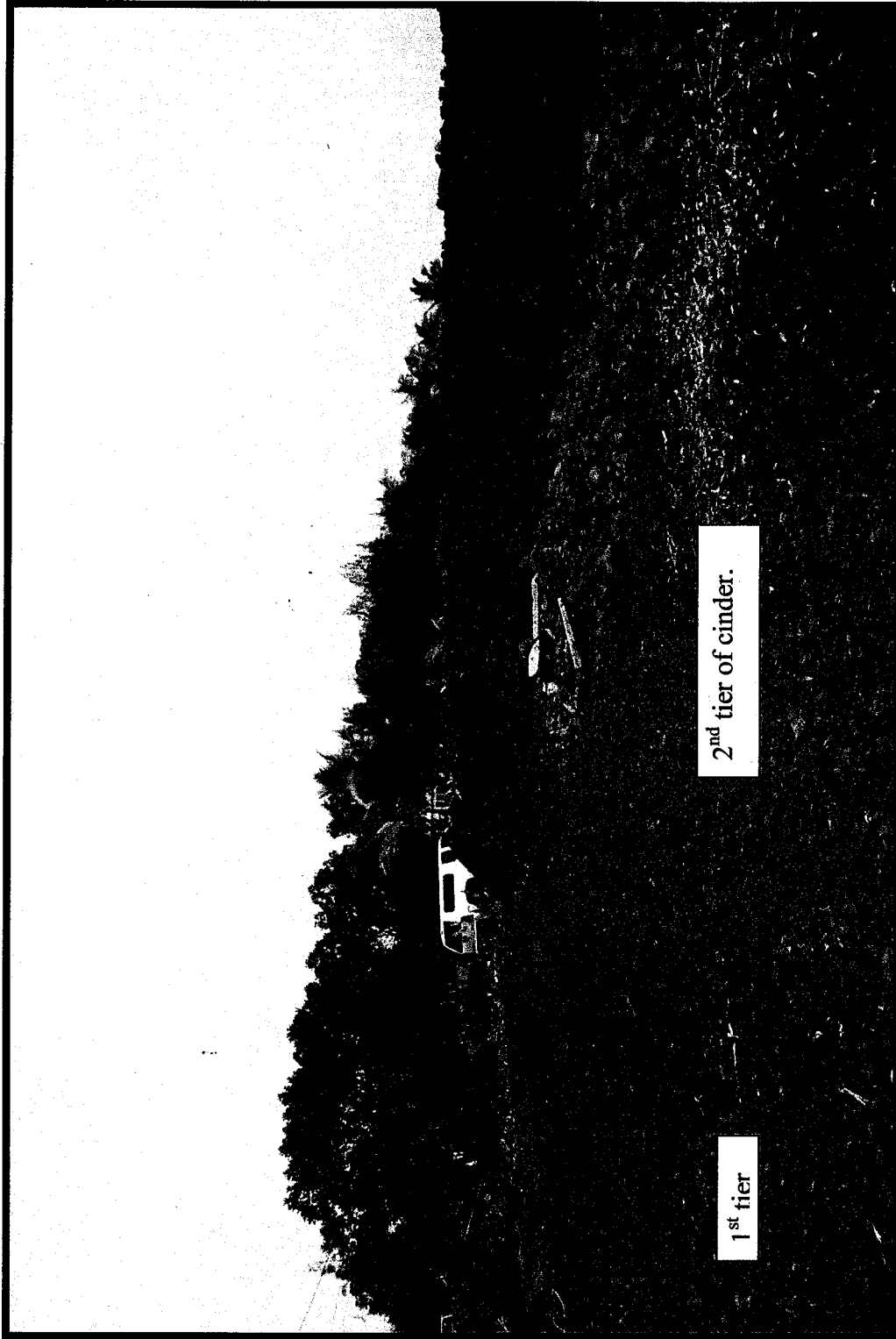


photo 158

depicts close up view of parcel (TMK# 1-4-26-02) SHAVER driveway on NW corner looking East.
Photo taken on October 17, 2003.

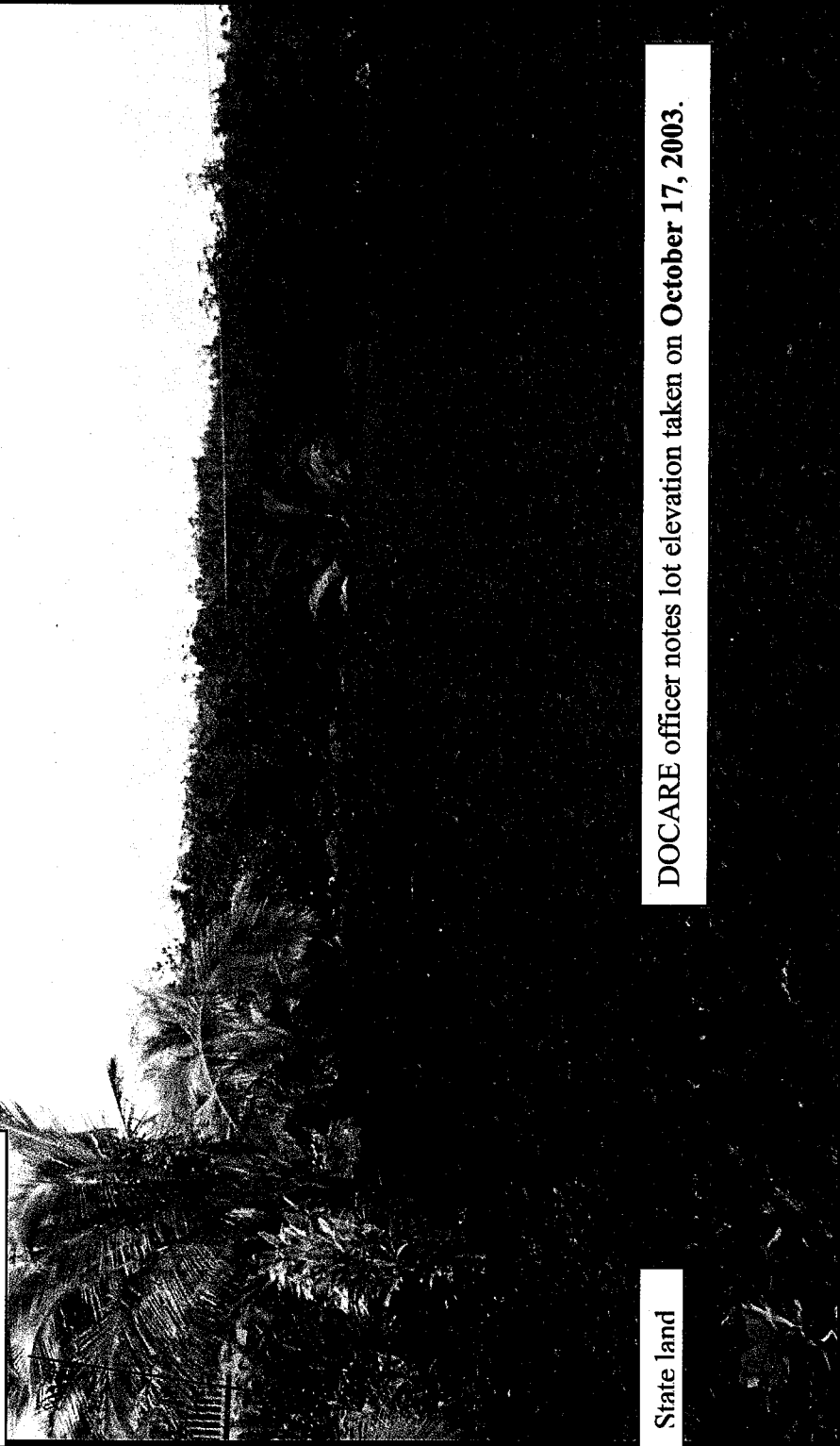


Approximate end neighbor's
property adjacent to Doug
Shaver's parcel.

State land landscaped by the neighbor

Photo 162

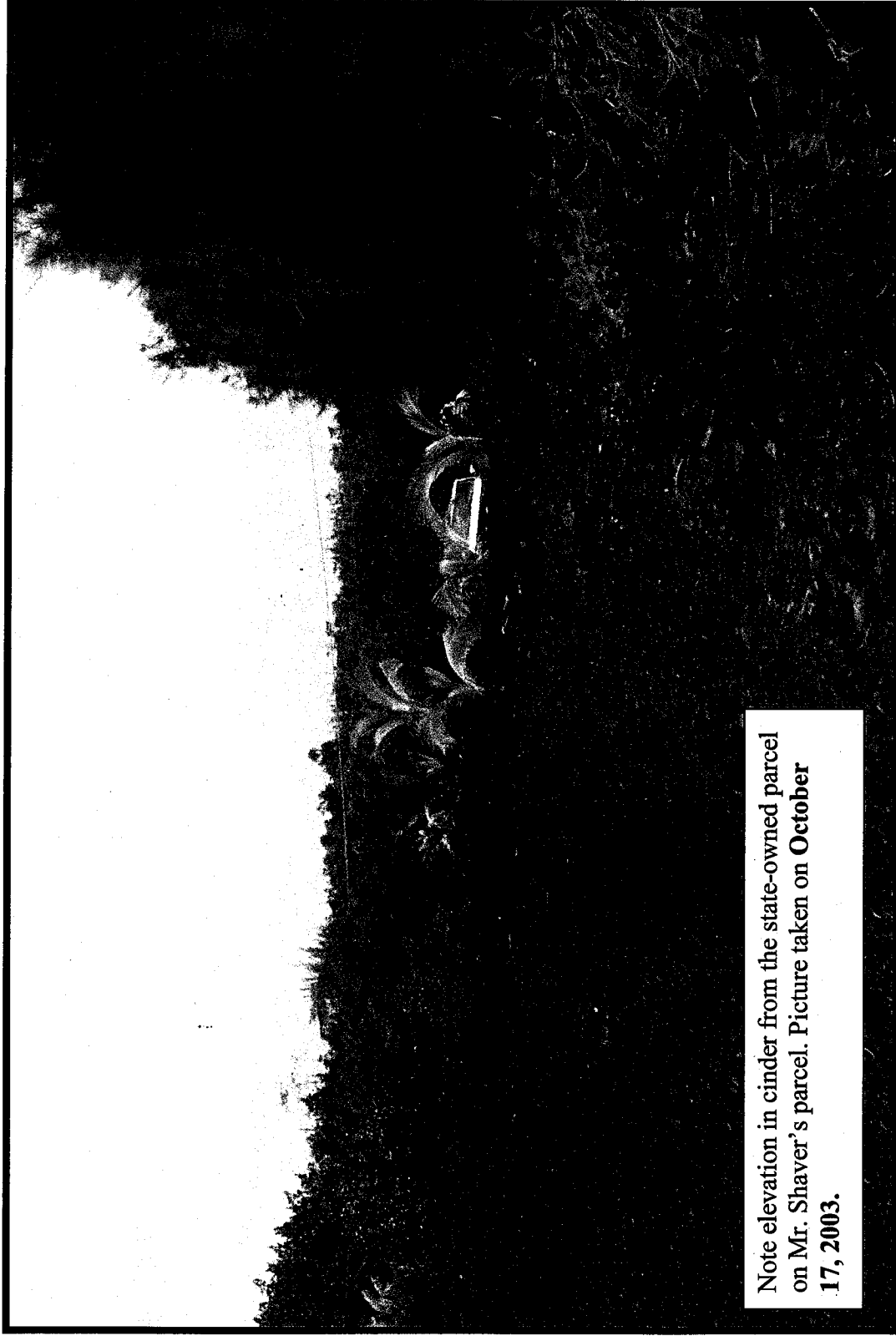
Neighbor's property



State land

DOCARE officer notes lot elevation taken on October 17, 2003.

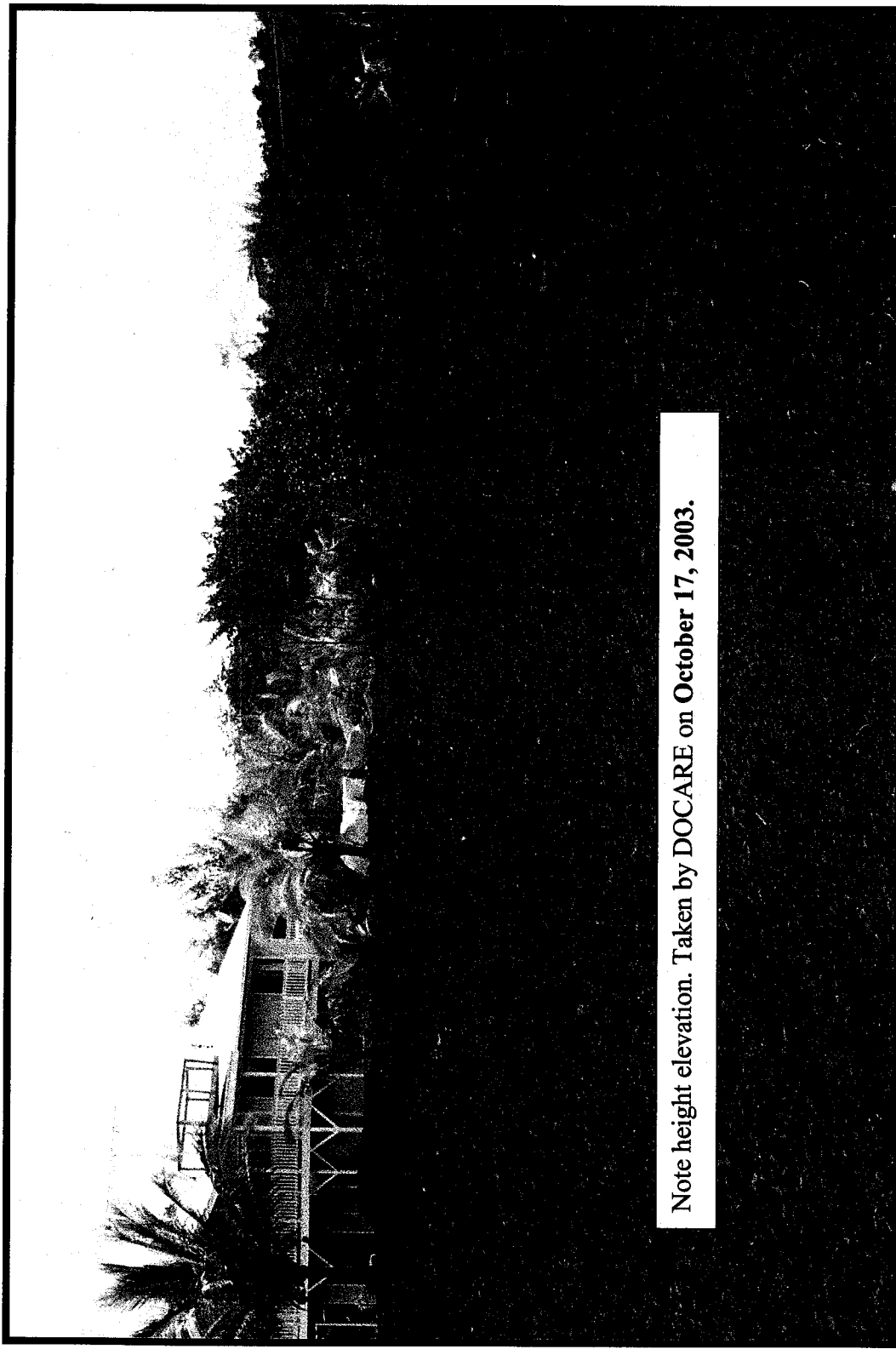
Photo 163 Exhibit G photographic report
depicts mid range view of parcel (TMK: 1-4-026:004) from SHAVERS, from S.E. corner of encroachment,
*Note lot elevations.



Note elevation in cinder from the state-owned parcel on Mr. Shaver's parcel. Picture taken on **October 17, 2003.**

Photo 164

Depicts mid range view of parcel (TMK: 1-4-26-04) SHAVERS, from N.E. corner of encroachment



Note height elevation. Taken by DOCARE on October 17, 2003.

Photo 165

Depicts mid range view of parcel (TMK # 1-4-26-04) SHAVER, from NE corner of encroachment, looking at SE corner.



Photo 169

depicts new bull dozer road headed towards the SHAVER parcel. Photo taken on October 17, 2003.

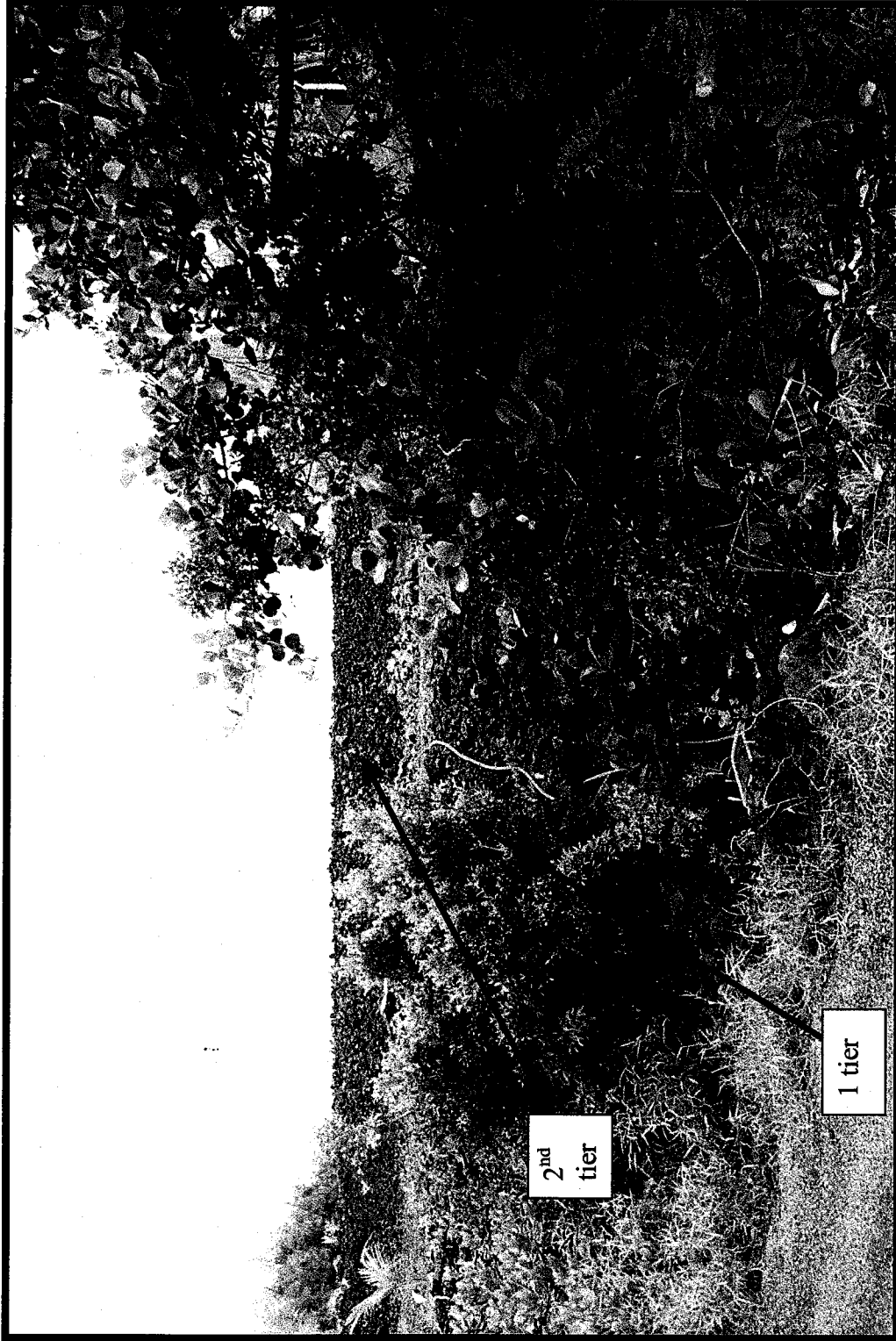


Photo 172

Depicts close up of view of parcel (TMK# 1-4-26-02) SHAVERS, from road/west boundary looking North. *Note the 2 tier lot elevation. Picture taken October 17, 2003.

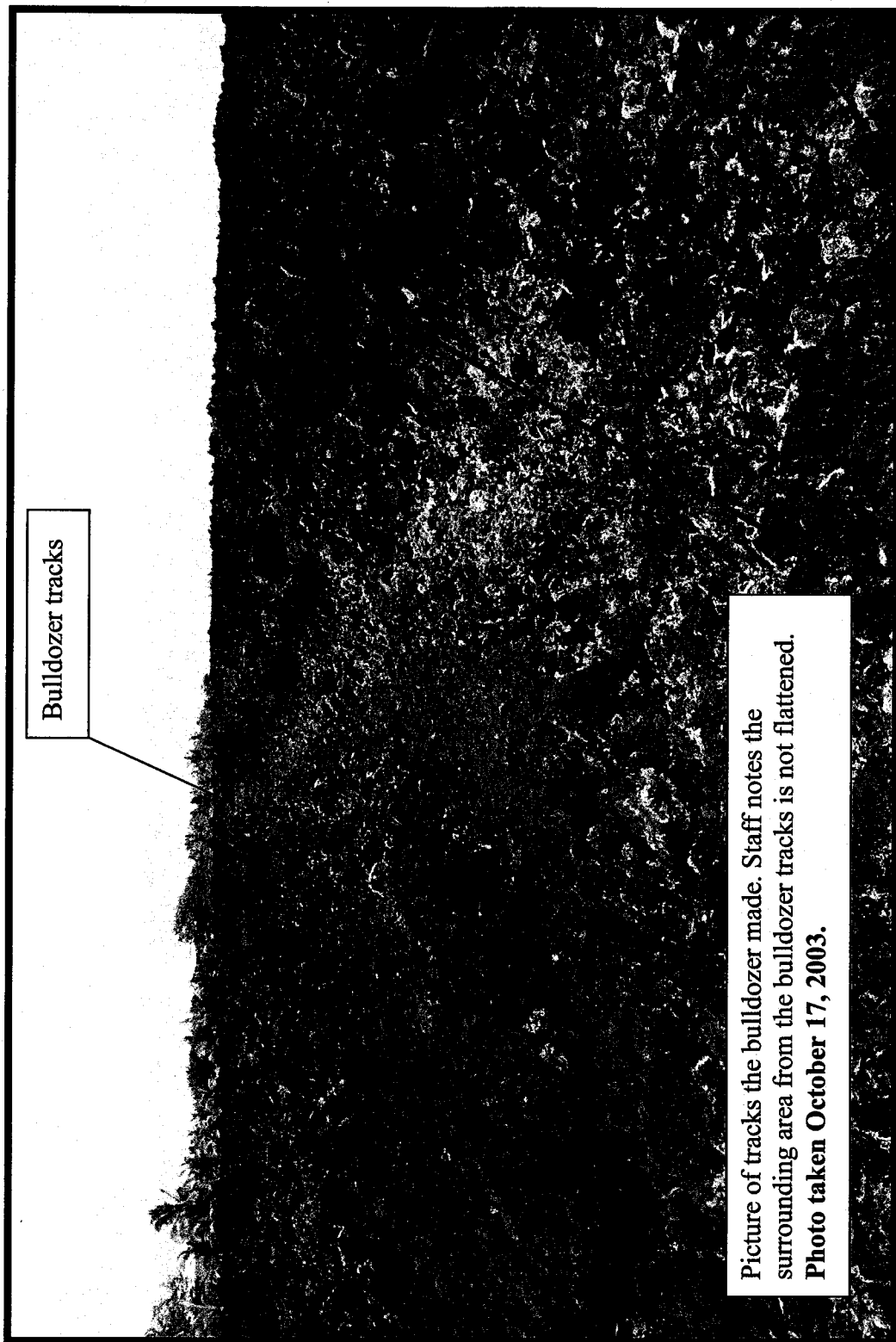


Photo 179

Depicts a mid range view of bulldozer tracks turning north which leads to the SHAVER parcel.

Copy

STATE OF HAWAII
DLNR/DOCARE

Exhibit # E

PHOTOGRAPHIC RECORD

Report # [REDACTED]

Classification LAND DIVISION:

Page 1 of 1 Pages

CDUA VIOLATION-ENCROACHMENT

DATE/TIME: 10-01-03/1115

PHOTOGRAPHER: CREO III [REDACTED]

NUMBER OF PHOTOS TAKEN: (6) Six

CAMERA USED: Canon 135 mm

WEATHER: Sunny DAY XXX NIGHT

PHOTO #	DESCRIPTION
1	[REDACTED]
2	[REDACTED]
3	Depicts an aerial photo of TMK#: 1-4-26-02 (SHAVER's)
4	[REDACTED]
5	[REDACTED]
6	[REDACTED]

OFFICER [REDACTED] BADGE NO [REDACTED] DATE/TIME 11-13-03/1148 Hrs.

SUPERVISOR APPROVAL [REDACTED] DATE/TIME

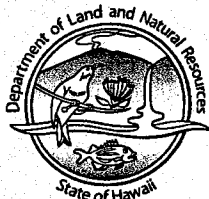
Form HB106

Aerial Exhibit 4

LAND DIVISION 10-01-03
75 Aupuni St. LANI
Hilo, Hawaii CDUA-ENCR
Exhibit #: E Photo# 44

LAND DIVISION 10-01-03
LAND DIVISION
75 Aupuni St.
Hilo, Hawaii CDUA-ENCROACHMENT
Exhibit #: 3 Photo# 3

LINDA LINGLE
GOVERNOR OF HAWAII



RECEIVED
DOCARE
HILO, HAWAII



2003 NOV 10 A 11:57

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

ENGINEERING DIVISION
POST OFFICE BOX 373
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

October 28, 2003

Memo:

To: Mr. Gordon Heit, Land Agent
Hawaii District Land Office

From: Eric Tanaka
Engineering Division, Hilo

Re: TMK #1-4-26:2

With the visitation to the lot with the violation of entering and removing material from Conservation District Use Land, the following estimations for the total area of CDU land disturbed and the amount of material removed and placed on the lot to change the topography of the owner's lot were made. Due to the unknown of the original topography of the CDU land and the individual lot, an average of the known fill was used for the estimations and the square footage of the disturbed area estimated. If a exact total would be required, a certified surveyor would be necessary and also a geologist would be needed to check and verify the total amount of filled placed on the lot.

1. The disturbed area of the CDU land, with the dimensions given by the DOCARE officer John Holly: 18,500 Sq. Ft.
2. The estimated cu. yds. of filled removed and placed on the lot: 1240.7 cu. yds.

If there are any questions and need for more assistance to this matter, feel free to contact me.

EXHIBIT 5



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P.O. Box 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON

ERNEST LAU
DEPUTY DIRECTOR

DEAN A. NAKANŌ
ACTING DEPUTY DIRECTOR FOR
THE COMMISSION ON WATER
RESOURCE MANAGEMENT

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND RESOURCES
ENFORCEMENT
CONVEYANCES
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND
STATE PARKS

NOTICE AND ORDER

Douglas SHAVER
14-4977 Laimana St.
Kapoho, Hawaii

SUBJECT: Illegal Activity in the Conservation District and on Public Lands Identified
as Tax Map Key: (3) 1-4-002:047

NOTICE IS HEREBY GIVEN that you are in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 5, entitled "Conservation District" providing for land use within the Conservation District, enacted pursuant to Chapter 183C, Hawaii Revised Statutes (HRS) and Title 13, Chapter 221, entitled "Unencumbered Public Lands" providing for the control of public activities on unencumbered public lands, enacted pursuant to Chapter 171, HRS.

An inspection of the premises on which the illegal activity has been conducted was made on 10/27/03 by the Department of Land and Natural Resources. We have determined that:

- 1) The subject property, identified as tax map key: (3) 1-4-002:047, is in the Conservation District (General/Resource/Limited/Protected Subzone) and is unencumbered public lands;
- 2) The following uses were conducted on the subject premises:
Grading and mining lava located adjacent to subdivision
by adjacent landowner of TMK (3) 1-4-026:002 and (3) 1-4-011:068
- 3) These uses were not authorized by the Department of Land and Natural Resources under either Chapter 13-5 or 13-221, HAR.

YOU ARE HEREBY ORDERED TO CEASE any further activity on the subject premises. Should you fail to cease such illegal activity immediately, you will be subject to fines up to \$2,000 per day pursuant to Chapter 13-5, HAR, and \$500 per day pursuant to Chapter 13-221, HAR, in addition to administrative costs incurred by the Department.

Please contact Dawn Hegger of the Land Division at 87-0380 to clear this matter.

By: 

PETER T. YOUNG, Chairperson
Board of Land and Natural Resources.

cc: District Board Member
Planning Branch
District Branch

EXHIBIT 6

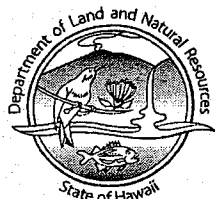
LINDA LINGLE
GOVERNOR OF HAWAII



PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
DEPUTY DIRECTOR - WATER



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:DH

Violation: HA-04-18

CERTIFIED / RETURN RECEIPT

FEB - 5 2004

Douglas Shaver
14-4977 Laimana Street
Kapoho, Hawaii 96778

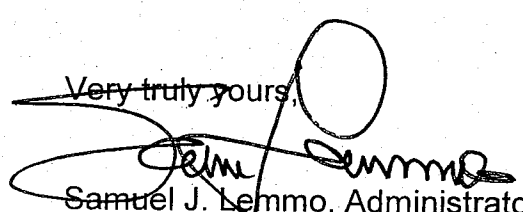
Dear Mr. Shaver,

SUBJECT: Alleged Unauthorized Grading and Grubbing, and Unauthorized Removal of 1960 Lava Flow Accretion from Subject Parcel TMK: (3) 1-4-002:047, Fronting Kapoho Beach Lot Subject Parcel TMK: (3) 1-4-026:002, Kapoho, Hawaii

The Department is currently reviewing the two (2) alleged unauthorized actions consisting of: 1) grubbing and grading action; and 2) the unauthorized removal of cinder from the 1960 Lava Flow from Subject Parcel TMK: (3) 1-4-002:047 to Subject Parcel TMK: (3) 1-4-026:002, Kapoho, Pahoia, Island of Hawaii, on land located within the State Land Use Conservation District, Resource subzone.

The Department will notify you when the issue will be scheduled before the Board of Land and Natural Resources meeting, at a time, date and location to be announced. In the meantime, you may wish to contact us to discuss these matters at your earliest convenience. Please call Dawn Hegger of the Office of Conservation and Coastal Lands staff at 587-0380, should you have any questions on this matter.

Very truly yours,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

cc: DOCARE - Hawaii Branch
Hawaii District Land Office
Hawaii County Planning Department
Kapoho Beach Community Association

EXHIBIT 7

Aloha

8/28/04

Attn: Samuel J Lemmo
Dawn Hegger
DLNR Office of Conservation
Re: Violation HA-04-18

My apologies for the delay in response to the case at hand. Family health issues and personal health issues have been extremely time consuming of late. Also, regrettably, I am unable to make the 9/15/04 hearing, as I only became aware of it on the afternoon of 8/24, and was scheduled to fly to the mainland early AM on 8/25 to attend to family matters preplanned months in advance. After my phone conversation with Dawn I believe we have rescheduled on 10/08, per my previous fax to you on 8/24.

As Dawn and I have spoken on the phone a couple of times on this issue, and she requested I submit a written account of what took place and what my thinking was regarding the grading. Again I apologize for the delay, however, at this time I would like to respond and present some of the conditions and thoughts that led to this situation.

As I was having grading done on my lot and had already paid for the equipment to be present for such activity, I made an apparently ill advised decision to have some grading done beyond my pins, believing at the time this was not problematic, and in fact would be beneficial to the overall environment on a long term basis.

If one looks at the adjacent lots, as I did, and in fact many of the lots in our subdivision that about the 1960 lava flow, most everybody over the last 20 years or so to the present, have encroached out to varying degrees. Most have landscaped and beautified the land. So, I consulted various members of the community, and the consensus was that there was no problem doing some grading in order to plant some coco's and other native vegetation to reclaim a little of the new aina so generously provided by Pele, as long as one did not build anything permanent on said property or try to claim it in any way. In fact, neighbors said replanting was actually encouraged. Also, everyone that I spoke with said there had never been any complaints from DLNR or anyone else for that matter regarding other encroachments.

As to the second situation, that material was removed from state land, there was no intentional 'taking' of anything. To my knowledge, I did not mine, nor remove anything from state land. My lot was already very high in the front center portion (eastern) and low on the back (western) portion, as it remains today, in effect a split level lot. Any perusal of the property will show that the graded portion is still well above the neighbors land in elevation. Yes it was graded, but that is the sum total of my actions, as erroneous as they may have been.

I realize ignorance is no excuse for stupidity, nor is 'they did it' so I can too, but I did not believe at the time that I was in error, nor did I realize that my actions might even have any consequences. I intended no harm, nor meant any disrespect for DLNR, Pele, nor the aina of Hawaii. In fact I consider myself to be an avid environmentalist, recycle religiously and would never do anything I felt was harmful to the land. I personally provided myself, and my truck and spent an entire day with a group of neighbors on a clean up of the shoreline from University Pond down to Champagne pond just a few years back. At which time we removed an entire truckload of debris, stacked well above the pipe racks. I mention this only as an insight into my persona and general orientation.

EXHIBIT 8

In retrospect, I should have sought the advice of the proper agencies, and I should have more thoroughly researched this matter, but I failed to do so, as it has been such a common practice along the flow, for so long, that I never considered that I might be breaking the law in some way. Now, I realize that this was not the proper course of action, but it was not malicious, nor intended for personal gain in any way.

So, in summation, I would like to offer my sincere apology for any breach of state policy And reiterate that I meant no harm, and in no way was aware of the fact that this action could be construed as having violated anything.

At this point I humbly put myself at the mercy of the board and hope the mindset at the time of these actions (which occurred almost two years ago) can be viewed for what they truly were. Hawaii is my home, and this piece of property is not some investment deal, but is my dream of many years coming to fruition.

I would like to request, if at all possible, that this matter could be handled, without having to appear in Honolulu, due to personal financial restraints, and that any penalties might somehow be satisfied by community service to Conservation, DLNR, or another appropriate agency. Maybe this could all result in a net positive.

Mahalo
Sincerely

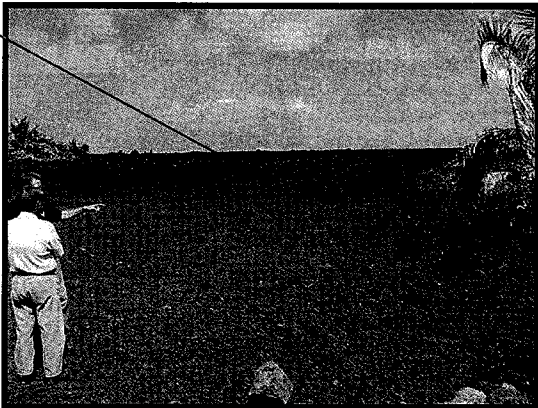


Douglas Shaver
PO Box 2072
Pahoa HI 96778
808-965-1082
808-937-3644
360-923-9503 (until 9/28/04)

SITE VISIT 9/202004
Doug Shaver TMK: (3) 1-4-026:002



**VIEW OF SHAVER PARCEL LOOKING AT
STATE-OWNED LANDS**



VIEW AT STATE OWNED LANDS



**VIEW OF LOWER AREA ON BACKSIDE
PARCEL ALONG ROADWAY**



**VIEW OF SHAVER AND KAPOHO
PARCEL STANDING ON STATE OWNED
LANDS**



**VIEW HDLO STAFF NEXT TO BACKFILL
AREA ON SHAVERS PROPERTY**



VIEW OF BACKFILL

art's Disease

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

121 WAIANUENUE AVENUE

P.O. Box 686

HILO, HAWAII 96721-0686

TELEPHONE 808.935.6644 FAX 808.935.7975

WWW.CARLSMITH.COM

SLIM@CARLSMITH.COM

November 24, 2004

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2004 NOV 29 P 5:03
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

DIRECT DIAL NO.

Ms. Dawn Hegger
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, Hawaii 96809

Re: Douglas Shaver / Enforcement File No. HA-05-25
TMK (3) 1-4-26:02

Dear Ms. Hegger:

This will confirm our telecon of November 22, 2004 in which we discussed the issues surrounding the alleged unauthorized excavation within the State Land Use Conservation District at Kapoho, as more particularly described in the above Enforcement File No. HA-05-25.

We understand that OCCL has made the decision to send this matter to the Land Board for disposition. As we discussed, Mr. Shaver is currently working with my office to resolve these issues. We anticipate working with OCCL to resolve most of the issues prior to the Land Board hearing.

Based upon the above, please accept this as our request to continue any hearing before the Land Board until at least February 2005 to allow Mr. Shaver time to perform studies necessary to respond to the issues raised in Enforcement File No. HA-05-25. Please inform me of the next scheduled Land Board hearing. If you have any questions, please feel free to contact me.

Very truly yours,

CARLSMITH BALL LLP


Steven S.C. Lim

SSL/lny
4812-9333-8112.1

HONOLULU · KAPOLEI · HILO · KONA · MAUI · GUAM · SAIPAN · LOS ANGELES

EXHIBIT 10

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

121 WAIANUENUE AVENUE

P.O. Box 686

HILO, HAWAII 96721-0686

TELEPHONE 808.935.6644 FAX 808.935.7975

WWW.CARLSMITH.COM

JZELKO@CARLSMITH.COM

DIRECT DIAL NO.

January 6, 2005

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2005 JAN - 7 A 8:32
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Ms. Dawn Hegger
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, Hawaii 96809

Re: Douglas Shaver / Enforcement File No. HA-05-25.
TMK (3)1-4-36:02

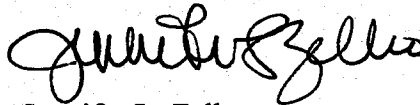
Dear Ms. Hegger:

As stated in the previous correspondence of November 22, 2004, we represent Mr. Douglas Shaver in the matter regarding the alleged unauthorized excavation within the State Land Use Conservation District at Kapoho, more particularly Enforcement File No. HA-05-25. We are currently working with an engineer to respond to the those particular allegations. The engineer is not available to begin studying Mr. Shaver's lot until the end of January, therefore we are requesting time to respond to the alleged violations. We anticipate working with OCCL to resolve most of these issues prior to the Land Board Hearing

Based upon the above, please accept this as our request to continue any hearing before the Land Board until at least April 2005 to allow Mr. Shaver and the engineer time to perform studies necessary to respond to the issues raised in Enforcement File No. HA-05-25. Please inform me of the next scheduled Land Board hearing. If you have any questions, please feel free to contact me.

Very truly yours,

CARLSMITH BALL LLP

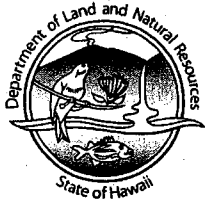


Jennifer L. Zelko

JLZ/jlz

cc: Douglas Shaver

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:DH

Enforcement Case: HA-05-25

CERTIFIED / RETURN RECEIPT

7004 0750 0001 8229 1374

Steven S. Lim
Carlsmith Ball LLP
121 Waianuenue Avenue
Hilo, Hawaii 96720

JAN 10 2006

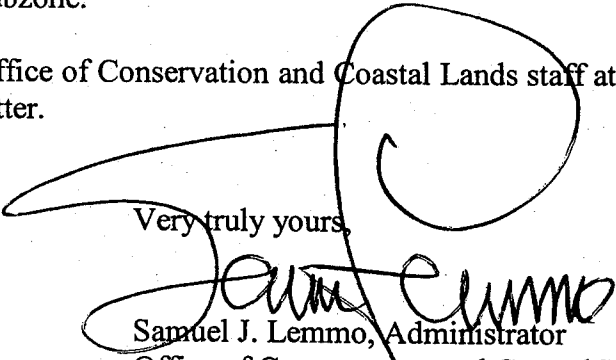
Dear Mr. Lim,

SUBJECT: Alleged Unauthorized Grading and Grubbing, and Unauthorized Removal of 1960 Lava Flow Accretion from Subject Parcel TMK: (3) 1-4-002:047, Fronting Kapoho Beach Lot Subject Parcel TMK: (3) 1-4-026:002, Kapoho, Hawaii

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) notes we plan to bring this before the Board of Land and Natural Resources (Board) on Friday, March 24, 2006, regarding Enforcement Case HA-05-25 for the two (2) alleged unauthorized actions consisting of: 1) grubbing and grading action; and 2) the unauthorized removal of cinder from the 1960 Lava Flow from Subject Parcel TMK: (3) 1-4-002:047 to Subject Parcel TMK: (3) 1-4-026:002, Kapoho, Pahoa, Island of Hawaii, on land located within the State Land Use Conservation District, Resource subzone.

Please call Dawn Hegger of the Office of Conservation and Coastal Lands staff at 587-0380, should you have any questions on this matter.

Very truly yours,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

cc: DOCARE - Hawaii Branch
Hawaii District Land Office
Hawaii County Planning Department
Douglas Shaver, 14-4977 Laimana Street, Kapoho, Hawaii 96778

EXHIBIT 11

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

121 WAIANUENUE AVENUE

P.O. BOX 686

HILO, HAWAII 96721-0686

TELEPHONE 808.935.6644 FAX 808.935.7975

WWW.CARLSMITH.COM

JZELKO@CARLSMITH.COM

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2005 JUN 16 A 10: 01

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

DIRECT DIAL NO.

June 15, 2005

Dawn Hegger
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
Post Office Box 621
Honolulu, Hawaii 96809

Re: Douglas Shaver/ Enforcement File No. HA-05-25

Dear Ms. Hegger:

As you know, we represent Mr. Douglas Shaver in the matter regarding the alleged unauthorized excavation and alleged unauthorized disturbance within the State Land Use Conservation District at Kapoho, more particularly Enforcement File No. HA-05-25. During our last discussions with your office, we requested information in regards to how DLNR and their officers calculated the amount of fill alleged in DLNR's report.

Our office is still awaiting a response from DLNR regarding the procedures used to calculate the respective amounts used in both the Engineer's report and DLNR's report. These calculations included an alleged disturbed area totaling 18,500 Sq. Ft. and an alleged excavation of 1240.7 cu. yds. of fill. It appears from DLNR files that Officer John Holly made the original calculations. The State engineer, Mr. Eric Tanaka (who did not make an on-site visit to the property) provided Officer Holly's amounts verbatim in his report to Mr. Gordon Heit, Land Agent, Hawaii District Land Office and these were the amounts used in DLNR's report.

Mr. Tanaka stated in his report, **"due to the unknown of the original topography of the CDU land and the individual lot, an average known fill was used for the estimations and the square footage of the disturbed area estimated. If a exact total would be required, a certified surveyor would be necessary and also a geologist would be needed to check and verify the total amount of fill placed on the lot."** Your office informed us from May through June 2005 that DLNR has been unable to contact Mr. Tanaka regarding the procedures used to calculate the alleged amounts provided by DLNR.

On May 27, 2005, I contacted Officer Holly and inquired into how he calculated the amounts used in the report. Officer Holly stated that I would have to contact Mr. Tanaka, as he is the State Engineer and "that is his job". I explained to Officer Holly that Mr. Tanaka used

HONOLULU

KAPOLEI

HILO

KONA

MAUI

GUAM

SAIPAN

LOS ANGELES

EXHIBIT 12

Dawn Hegger
June 15, 2005
Page 2

verbatim the amounts Officer Holly calculated and provided to Mr. Tanaka. Officer Holly could not explain how he calculated the amounts and proceeded to say "we could talk about it in court."

Due to the fact that Officer Holly has been uncooperative with our office and DLNR's failure to contact Mr. Tanaka, we cannot proceed in responding to this matter. The amounts used in DLNR's report are substantially larger than the amounts we have calculated. Therefore, our office again requests information from DLNR regarding how the amounts used to fine Mr. Shaver were calculated.

We are hoping to expedite this process in as much as possible. If you have any questions you may call me at 808-935-6644 or email me at jzelko@carlsmith.com.

Very truly yours,

CARLSMITH BALL LLP

A handwritten signature in dark ink, appearing to read "Jennifer L. Zelko", written in a cursive style.

Jennifer L. Zelko

JLZ/jlz

cc. Douglas Shaver



STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
SURVEY DIVISION
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

June 26, 2006

MEMORANDUM

TO: Mr. Sam Lemmo, Administrator
DLNR, Ocean Conservation and Coastal Lands

ATTN: Ms. Dawn Hegger

FROM: Reid K. Siatot, State Land Surveyor
DAGS, Survey Division

SUBJECT: Volume Computations for graded area on TMK: 1-4-02: Por. 47

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 JUN 28 A 8:48
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

On May 25, 2006 a site inspection was conducted on State of Hawaii owned property (TMK 1-4-02:47) fronting private property (TMK 1-4-26:02) that had been graded without approval. The limit of the area in question (see hatched area below) includes the graded portion of State owned land between the extensions of the side boundaries of TMK 1-4-26:02. The length of the graded area was measured along the extension of the side boundaries using a 100 ft. tape. The average depth at the makai ends of the graded area was measured using a 25 ft. hand tape.

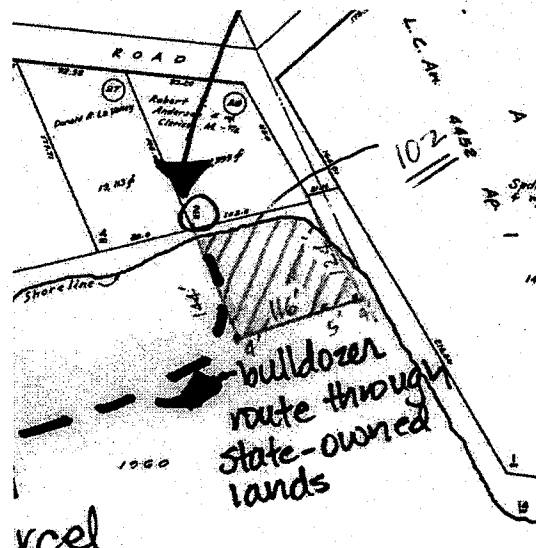


EXHIBIT 13

Mr. Sam Lemmo, Administrator
June 26, 2006
Page 2

The graded area of State of Hawaii owned property was computed by taking the average length multiplied by the average width and subtracting the area of private land fronting the property. The area of private land fronting the property was measured using a planimeter, or equivalent. The volume is computed by multiplying the area by the average depth.

area (hatched) = length x width – area of private land
where length = $(144+124)/2 = 134$ ft.
 width = $(102+116)/2 = 109$ ft.
 area of private land = 1,100 sq. ft.

area (hatched) = 134 ft. x 109 ft. – 1,100 sq. ft. = 13,500 sq. ft.

volume = area (hatched) x depth = 13,500 sq. ft. x 4 ft. = 54,000 cu. ft. or 2,000 cu. yds.

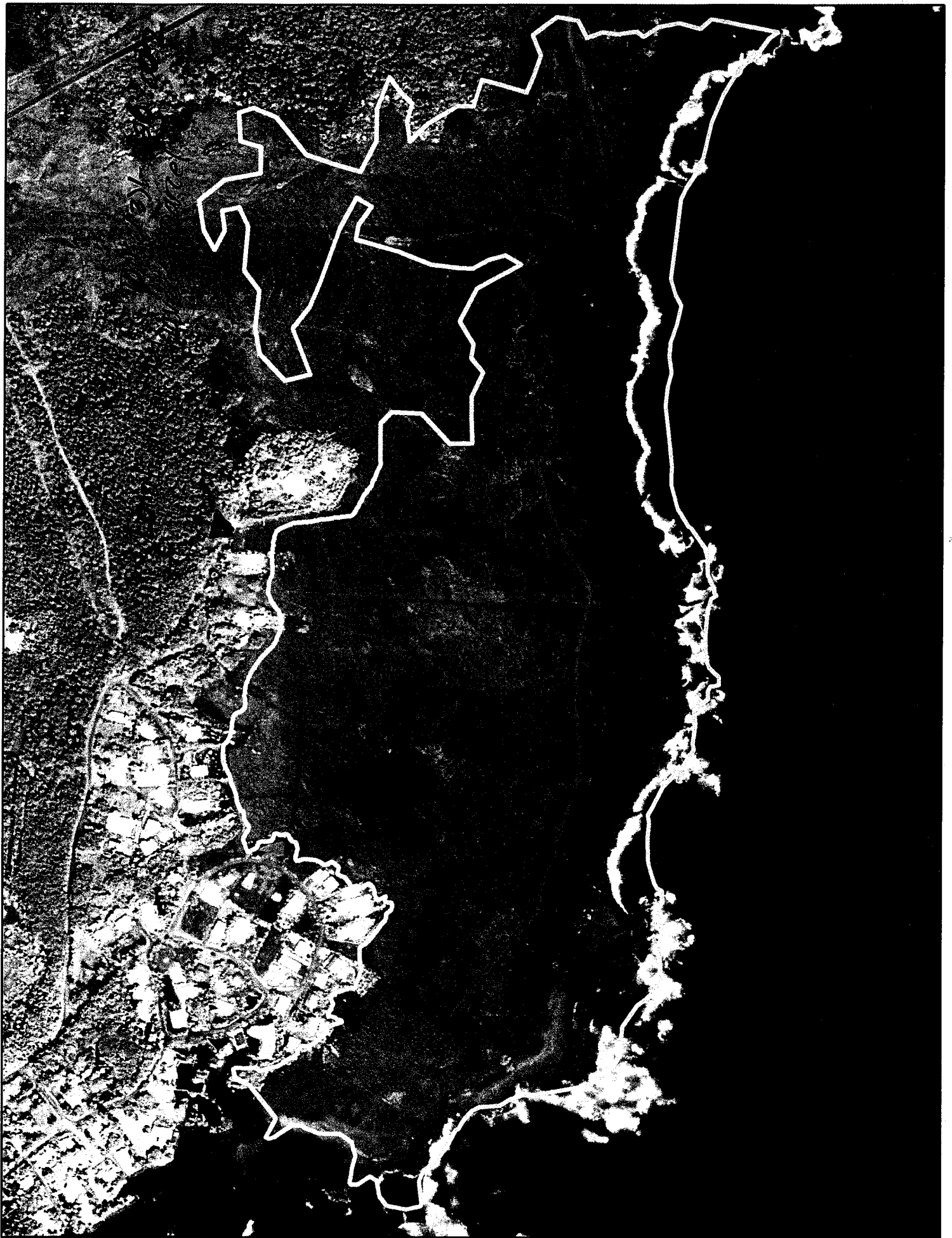
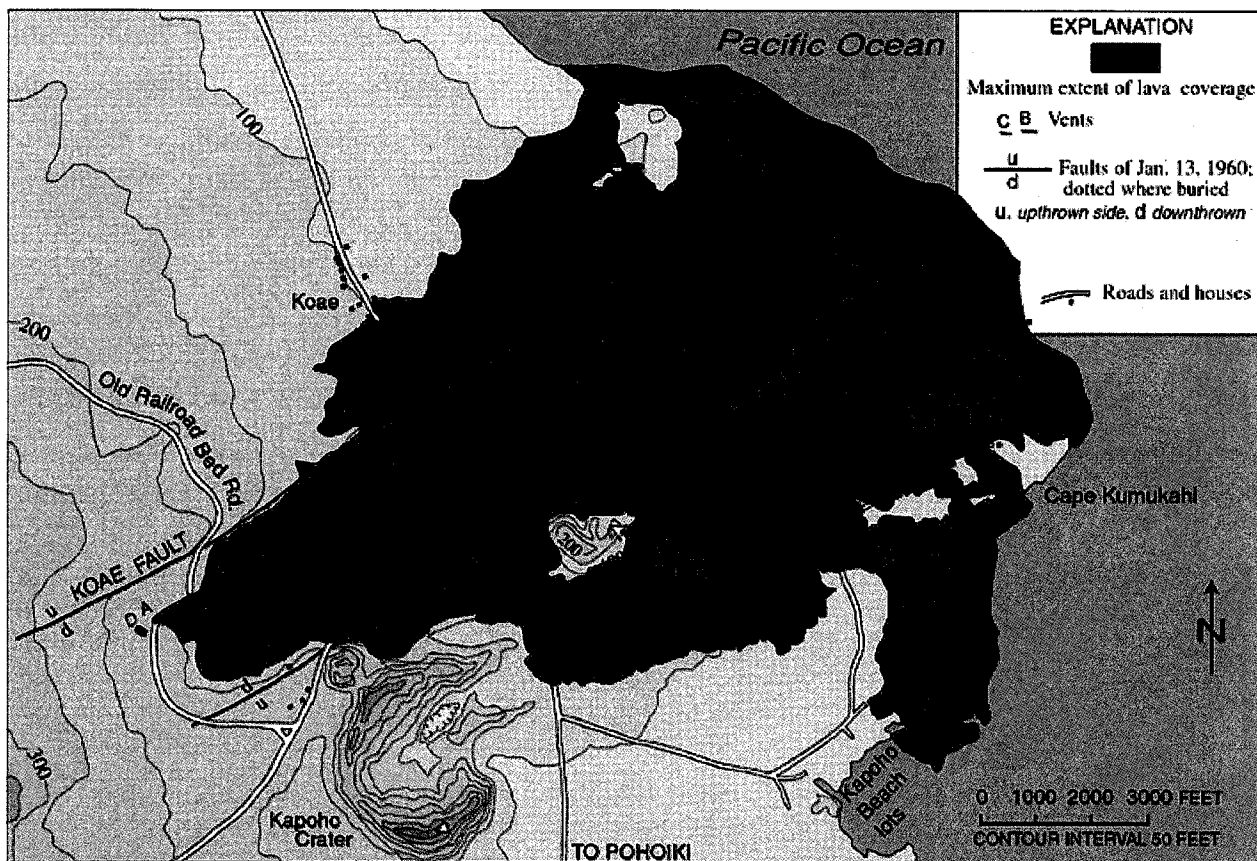


EXHIBIT 14

ON



Map showing the situation at the end of the eruption. The Coast Guard residence area has been covered, but the lighthouse remains. Kula Pond is gone, and 'a'a invaded the north end of Kapoho Beach Lots. Lava completely buried the third Kuki'i-Kapoho barrier and, on February 4, completely surrounded the double cone at Pu'u Kukae-Pu'u Kuki'i.

Source: United State Geological Survey website:

<http://hvo.wr.usgs.gov/kilauea/history/1960Jan13/kapoho7.html>

Back to
BLNR.

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

121 WAIANUENUE AVENUE

P.O. BOX 686

HILO, HAWAII 96721-0686

TELEPHONE 808.935.6644 FAX 808.935.7975

WWW.CARLSMITH.COM

JZELKO@CARLSMITH.COM

February 6, 2007

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2007 FEB - 8 A 8:37
DEPT. OF LAND AND
NATURAL RESOURCES
STATE OF HAWAII

Mr. Sam Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
Post Office Box 621
Honolulu, Hawaii 96809

Re: Douglas Shaver - DLNR File No. ENF HA-05-25
TMK: (3) 1-4-32:02 AT Kapoho Beach Lots Subdivision, Puna, Island and State
of Hawaii

Dear Mr. Lemmo:

This is a follow-up to our settlement discussions with the Department of Land and Natural Resources, Office of Conservation and Coastal Lands ("OCCL") in Honolulu on January 22, 2007. Based upon that meeting, our research and discussions with our client, our client has authorized our office to offer to OCCL in full and final settlement of all claims in the above matter, a payment in the amount of \$4,224.07, which includes a fine of \$2,000.00 and OCCL's administrative costs in the amount of \$2,224.07.

As you are aware, Mr. Shaver is suffering from a life threatening illness, his condition continues to worsen, and he may eventually have to move to the mainland for treatments.

Mr. Shaver has stated from the beginning that he is willing to pay the fines that were assessed against him for the alleged violation. However, he has always maintained that he did not remove fill from the State land. The OCCL has admitted that they have no knowledge of the original topography of the property and therefore could not say with accuracy how much (if any) fill had been removed from the State land. If OCCL agrees to present this settlement offer to the Board of Land and Natural Resources ("BLNR"), please be advised that Mr. Shaver's illness will not allow him to attend the BLNR hearing, and his remaining financial resources will not enable our office to attend the hearing on his behalf.

Mr. Sam Lemmo, Administrator

February 6, 2007

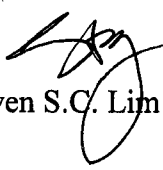
Page 2

Therefore, on behalf of Mr. Shaver, this will request that OCCL accept this offer to pay the \$4,224.07 fine and administrative costs to close this matter. We understand and agree that no further alteration use or landscaping of the State Land is allowed without the express prior approval of the OCCL and BLNR. Pursuant to Rule 408 of the Hawaii Rules of Evidence, this letter is for settlement purposes only and cannot be used to prove liability.

Thank you for your attention to this matter. Should you have any questions regarding the above, please do not hesitate to call.

Sincerely,

CARLSMITH BALL LLP

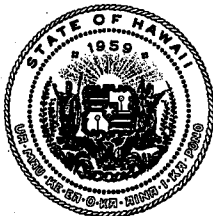
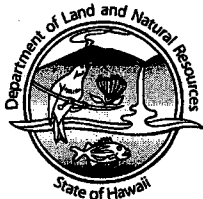

Steven S.C. Lim

SSL:lmy

cc. Douglas Shaver

4819-8001-4593.1

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:DH

ENF: HA-05-25

CERTIFIED / RETURN RECEIPT

7004 0750 0001 8229 3989

Steven S. Lim
Carlsmith Ball LLP
121 Waiānū Avenue
Hilo, Hawaii 96720

FEB 14 2007

Dear Mr. Lim,

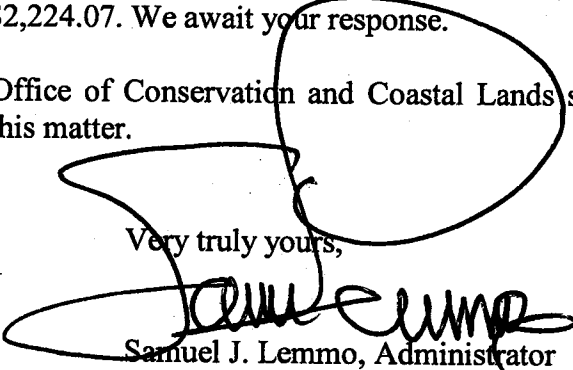
SUBJECT: Alleged Unauthorized Grading and Grubbing, and Unauthorized Removal of 1960 Lava Flow Accretion from Subject Parcel TMK: (3) 1-4-002:047, Fronting Kapoho Beach Lot Subject Parcel TMK: (3) 1-4-026:002, Kapoho, Hawaii

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) received your letter, dated February 6, 2007, regarding the proposed settlement of Enforcement Case HA-05-25.

The OCCL has reviewed the case and in light of your letter, we would like to suggest an alternative solution. We suggest that Mr. Shaver re-survey the State-owned parcel TMK: (3) 1-4-002:047 fronting his parcel; under the direction of a Hawaii District Land Office staff. This action will deter Mr. Shaver and/or future landowners from using the state-owned land. We will pursue the administrative fines of \$2,224.07. We await your response.

Please call Dawn Hegger of the Office of Conservation and Coastal Lands staff at 587-0380, should you have any questions on this matter.

Very truly yours,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

c: DOCARE - Hawaii Branch
Hawaii District Land Office
Hawaii County Planning Department

EXHIBIT